

# FACT SHEET



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## DOWNTOWN REDEVELOPMENT FREQUENTLY ASKED QUESTIONS

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Issue #1

June 2, 2006

*This is the first in a series of public reports from the City of Sunnyvale on the downtown redevelopment project.*

### KEY POINTS

**1) Who is responsible for the downtown project?**

Most of the property that once was the Town Center Mall is now owned by Fourth Quarter Properties, the firm created by developer The Forum Group to actually build our new downtown project. The Macy's and Target properties are individually owned by those companies, and the City owns land that was part of the now-raised parking structure on the Mathilda side of the mall. The developer (Fourth Quarter Properties) has the responsibility and has made a contractual commitment to redevelop the old Town Center Mall.

**2) Why has the project stalled?**

That's what the City would like to know. Because the developer has failed to communicate any issues to the City, the Redevelopment Agency's notice of breach of contract sent to the developer called for an explanation of why deadlines have not been met, along with the developer's proposed method and timetable to meet those now-passed deadlines. The response from the developer to the Redevelopment Agency failed to answer any of those questions. The City is now preparing to give the developer one last chance to answer those questions – within a very short time period – before we take legal action in accordance with our agreement.

**3) Is the Town Center Mall site going to be rebuilt?**

Yes. City Council has placed the highest priority on downtown redevelopment. It is a key element of the vitality of our City and the approved plan captures our vision of the best way to develop this land for the benefit of all in our community.

**4) Why isn't the City moving faster to rebuild the downtown project?**

The City has literally bent over backwards to accommodate the developer, and we would probably continue to do so if we saw some indication of their intent to build the project that was approved by the City. Our patience has worn thin, however, and the City is now actively pursuing those remedies available to restart the project.

**5) Why has the City bent over backwards for this developer?**

From the start, our desire was to see the redevelopment project get built. When there were delays, we listened to the explanations given by the developer and in good faith accepted their promises. It has been our intent to work with the developer to assist them however possible to complete this important project. In many cases, we gave the developer some grace periods to help them. Dealing with where we

now are, we have notified them of the breach and their failure to cure the breach. The time is up and the developer must either get going on the project, or we will move it along ourselves.

**6) I hear the project has changed – there will be more housing and the theater has changed.**

The approved project has not changed. The developer agreement (DDOPA) outlines the specifics of the approved plan – the plan the developers and other stakeholders all agreed to. The developer has publicly discussed through the news media that they would like to change the plan and have spoken of it as pretty much a done deal. But this is not true. Even if the City were to consider an application to change the project, no such discussion will take place until the developer satisfies the notice of breach of the current contractual agreement.

**7) Who can we blame?**

It's not a matter of "blame," but Council has expressed their deep concern over Fourth Quarter Properties' failure to meet specific development deadlines called out by the development agreement, and their failure to adequately respond to the Redevelopment Agency's notice of a breach of the agreement by the developer.

**8) What is this "DDOPA" I hear about?**

The DDOPA is the Disposition and Development and Owner Participation Agreement. This is the agreement the stakeholders – Fourth Quarter Properties and the Redevelopment Agency – have signed to define the project and establish financial relationships, construction schedules and other details of the project.

**9) Who makes up the Redevelopment Agency (RDA)?**

The Sunnyvale City Council sits as the Redevelopment Agency. While there are legal distinctions between the RDA and the City Council, the RDA and Council both represent and speak to City interests.

**10) The City has said Fourth Quarter Properties has breached their agreement. What does this mean?**

The developer agreement – the DDOPA – spells out a specific timetable of actions the developer must take. Some of the specifics include identification of who will build the homes in the project, submission of a site plan, financing reports, etc. Fourth Quarter properties has failed to meet several of these major deadlines. By not living up to the terms of the DDOPA which they signed, they have violated – or breached – the agreement. When the City notified Fourth Quarter of the breach, giving them 60 days to provide the City with a written explanation of why the developer missed the deadlines, what they will do to complete the required items and a new schedule for the project, Fourth Quarter failed to provide an adequate response. As a last-ditch effort, the City is giving Fourth Quarter a short period of time to provide a proper response.

**11) Who can make the redevelopment happen?**

In a perfect world, the developer would honor the commitment they made by signing the Disposition and Development and Owner Participation Agreement (DDOPA) – the agreement between the Sunnyvale Redevelopment Agency and the developer. This development agreement contains provisions the City can use to get the project moving again. The City Council not only can, but is now working through the legal process to invoke the parts of the agreement that will get the project moving.

**12) Have the delays affected the completion date?**

Putting it bluntly, they have pushed back the completion date significantly. At this point in time, until either the developer commits to building the approved project, or the City selects a new developer, it is impossible to say when it will be finished. City Council views this redevelopment as the highest priority project in the City, and will do everything they can to create a downtown that will be a focal point of shopping, entertainment, commerce and social gatherings ... all as outlined in the approved redevelopment plan.

**13) What action is the City Council taking?**

The City will give the developer a final short period in which to cure their breach of the developer agreement (DDOPA). By the end of this deadline, if the developer provides a satisfactory reply, the project will be restarted, with careful ongoing review by the City. If the developer again fails to cure the breach, Council will move forward to get the project going, as provided by the DDOPA, which may mean purchasing the property and finding a new developer.

**14) Is the City going to take legal action?**

Yes; the breach of agreement process is in fact a legal process. Under the development agreement (DDOPA) the Redevelopment Agency has the right to purchase the property and find another developer. The Agency is prepared to undertake this option if it is proven necessary.

**15) How much are the delays costing the City?**

For each year of delay in completion, the City faces a loss of \$2 million in potential sales tax revenue. Depending on how the current delays are resolved, there could be additional legal costs to the City. The primary issue is that we need to get the project completed. Financially, much of the tax revenue from the completed project will go back to the developer for a period of several years. That's part of the Redevelopment Agency's incentive to the developer to build the project in the first place. The most important aspect, in the City's view, is the need to revitalize downtown and complete what is destined to be a hub within the City.

**16) Can the developer be held liable for the costs?**

If the City moves forward to finding a new developer for the project, the current developer would lose the money they have put into preparatory work, including designs, reports and demolition work. We are exploring whether or not there is a legal basis to recover costs.

**17)Have other aspects of the design changed?**

Again, the project has not changed. There is one redevelopment concept approved by the City for downtown. The plan meets Council's desire to create a project that is the right match for our city ... the right mix of housing, retail and commercial space, designed to fit into Sunnyvale's way of life. The vision has always been to create a focal point in our city – a gathering place that incorporates entertainment, retail shopping and commercial space. That is the same project that the developer agreed to build and that the Council expects them to build.

**18)Can't the City just take the project over and get it done?**

If the breach continues, that is one possibility. Either through the provisions of the developer agreement (DDOPA) or – as a last resort – through use of eminent domain, the Redevelopment Agency certainly can take over the property. In either instance, the owner of the property (Fourth Quarter Properties) will be paid fair market value for the property.

**19)If the City selects a new developer, how much time will this add to the project?**

That's not clear right now. It certainly will delay it from the original plan, but considering the fact that the current developer is not doing anything on the project, we may well be better off with a change. In addition to the time involved in identifying a new developer, due diligence must be done to ensure the developer is capable of completing the project. Depending on negotiations with a new developer, there may be a need for additional community outreach and an either updated or new environmental impact report.

**20)Is the City considering other developers?**

If the breach is not cured by the developer, then this is a legal option open to us under the developer agreement (DDOPA).

**21)Will the City have to use Eminent Domain?**

Eminent Domain is an option open to the Redevelopment Agency, and it will be considered. In this case, there does not appear to be any advantage to using eminent domain since the developer agreement (DDOPA) already provides a method for the City to acquire the property and utilize a new developer. Regardless of the method used to acquire the site, the City would pay fair market value for the property.

**22)What assurances can you give me that a mall will be built?**

City Council has made this their highest priority. The redevelopment of downtown into a vital hub of shopping, entertainment and commerce, as well as a wonderful social gathering place, is important to Sunnyvale's vitality and quality of life.

**23) Will there be any future reports to Council on the project and any public meetings?**

City Council and the Redevelopment Agency will be following the developer's responses to the breach notice. In addition, if the developer continues to fail to cure the breach, there will be reports to Council and the Redevelopment Agency outlining options and possible future actions.

Feedback and comments from our community members are a valuable and important part of implementing this project. Depending on the next steps adopted by Council, additional community outreach meetings will be scheduled as appropriate. By watching KSUN-15, the City's Web site, *Quarterly Report* and the news media, you will see announcements of any scheduled meetings. In addition, you can check the agendas for upcoming City Council meetings and when there are items related to downtown redevelopment on the agenda, you may watch the meeting on KSUN-15 or go to Sunnyvale Public Library to get a video tape of the meeting.

**24) How can I tell you what I think?**

In addition to attending Council meetings and future community outreach meetings, you can always call our Downtown Redevelopment Project Hotline at (408) 737-4900, or send us an e-mail at [downtown@ci.sunnyvale.ca.us](mailto:downtown@ci.sunnyvale.ca.us).

**25) How can I be updated?**

Watch the City's Web site at [downtown.inSunnyvale.com](http://downtown.inSunnyvale.com), read *Quarterly Report* and watch KSUN-15 for updates. City staff will also be working with local news and business reporters to keep you informed. The *Sunnyvale Community E-News* electronic newsletter will also include information updates.

**26) Why hasn't the Web page been updated since 2004?**

In fact, the [downtown.inSunnyvale.com](http://downtown.inSunnyvale.com) site has been updated as recently as last month. Had construction proceeded as originally agreed upon, this would not be an issue. We plan frequent updates on the Web pages and elsewhere as Council moves forward to get this project restarted.

**27) When can we start shopping again in Downtown Sunnyvale?**

There are great shops open right now in Sunnyvale, and they will remain open throughout the redevelopment. Murphy Avenue, Town and Country, and Macy's and Target on the old mall site, are ready to serve your every shopping need.

**28) What stores will be coming to downtown?**

The developer – not the City – will act as the leasing agent, negotiating with businesses to occupy the retail and commercial space. While the plan calls for certain types of businesses, it is too early to specify which particular businesses will occupy space. The expectation is that there will be a comfortable mix of national, regional and local businesses in our downtown.

**29) How can I get around during construction (traffic, sidewalks, noise, public transportation)?**

Part of the project's early stages was an extensive environmental impact report. This report, known as an EIR, explored traffic impacts during construction. The City has

imposed requirements on the developer to mitigate impacts to the public, including limiting the times and routes heavy equipment may move in and out of the site. While pedestrian sidewalks immediately adjacent to the construction site may be closed for safety, other paths are open. Vehicle travel lanes and bicycle lanes are not expected to suffer any extended impacts. There is still plenty of parking in downtown, including a new lot on the Mathilda side of Macy's where the parking garage used to stand.

The developer did an excellent job during the first phase of demolition – tearing down the parking structure – in controlling dust, mitigating the project, erecting appropriate signage and even getting that phase completed ahead of schedule.

**30) Where is this redevelopment? Does it include Town and Country, Murphy Avenue or the Mozart office tower buildings?**

In practical terms, the redevelopment area is the Town Center mall and the adjacent parking lots. Town and Country, Murphy Avenue and the Mozart buildings are not included in the redevelopment project.